

TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

RE: Issues and Decision Memorandum for the Final Results in the Expedited
Sunset Review of the Antidumping Duty Order on Silicon Metal from the
Russian Federation

Summary

We have analyzed the substantive response of the domestic interested party in the sunset review of the antidumping duty order on silicon metal from the Russian Federation (Russia). We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is a complete list of the issues in this sunset review for which we received substantive responses:

- 1. Likelihood of Continuation or Recurrence of Dumping;**
- 2. Magnitude of the Dumping Margin Likely to Prevail.**

History of the Order

On March 26, 2003, the Department of Commerce (the Department) published an antidumping duty order on imports of silicon metal from Russia.¹ As a result of the Amended Final Determination, the Department established weighted-average margins of 61.61 percent for ZAO Kremny and SUAL-Kremny-Ural, Ltd. (Kremny); 87.08 percent for Bratsk Aluminum Smelter and Rual Trade Limited (Bratsk); and 79.42 percent for the Russia-wide entity.

Since the publication of the antidumping duty order, the Department has conducted no administrative reviews with respect to silicon metal from Russia. There have been no related findings or rulings (e.g., changed circumstances reviews, scope rulings, or duty absorption reviews) since the publication of the antidumping duty order. The order remains in effect for all manufacturers, producers, and exporters of the subject merchandise.

¹ See Antidumping Duty Order: Silicon Metal from Russia, 68 FR 14578 (March 26, 2003) (Antidumping Duty Order), amended by Silicon Metal From the Russian Federation; Notice of Amended Final Determination Pursuant to Court Decision, 71 FR 8277 (February 16, 2006) (Amended Final Determination).

Background

On February 1, 2008, the Department published the notice of initiation of the sunset review of the antidumping duty order on silicon metal from Russia.² On February 19, 2008, the Department received a timely notice of intent to participate in this sunset review from Globe Metallurgical Inc. (Globe), in accordance with 19 CFR 351.218(d)(1)(i). Globe claimed interested party status under section 771(9)(C) of the Tariff Act of 1930, as amended (the Act), stating that it is a manufacturer in the United States of the domestic like product. Globe was also a petitioner in the investigation. On February 29, 2008, Globe submitted a timely substantive response within the deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from respondent interested parties with respect to this proceeding. Therefore, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department determined to conduct an expedited (120-day) sunset review of the antidumping duty order on silicon metal from Russia.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted a sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the U.S. International Trade Commission (ITC) the magnitude of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

Globe contends that revocation of the antidumping duty order on silicon metal from Russia would be likely to result in a renewed influx into the U.S. market of low-priced, dumped silicon metal from Russia. Globe claims that the Department's policy bulletin regarding the conduct of five-year ("sunset") reviews of antidumping and countervailing duty orders states that the Department will make its likelihood determination on an order-wide basis.³ Additionally, Globe further cites Policy Bulletin 98:3, which states that "declining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes," and that, "existence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to

² See Initiation of Five-Year ("Sunset") Reviews, 73 FR 6128 (February 1, 2008) (Initiation Notice).

³ See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (citing the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1, 889-90 (1994) (SAA) (Policy Bulletin 98:3)).

dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed.”⁴ Globe argues that according to Policy Bulletin 98:3, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (1) dumping continued at any level above de minimis after the issuance of the order; (2) imports of the subject merchandise ceased after the issuance of the order; or (3) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.⁵

Globe states that in the investigation, the Department calculated antidumping duty margins of 87.08 percent for Bratsk, 61.61 percent for Kremny, and 79.42 percent for all other Russian producers or exporters.⁶ Globe further states that no administrative review of the antidumping duty order on silicon metal from Russia has been conducted, and argues that no producer or exporter has demonstrated that it can ship Russian silicon metal to the United States without dumping.

Globe further argues that imports of silicon metal from Russia have “essentially ceased” since the issuance of the antidumping duty order. Citing data from the Department’s Bureau of the Census, Globe contends that imports of silicon metal from Russia totaled 30,020 metric tons (MT) in 2002, the year the petition was filed. Globe further contends that there were no imports of silicon metal from Russia for the years 2003 and 2004, imports of 22 MT in 2005, and no imports of the subject merchandise for the years 2006 and 2007. Thus, according to Globe, there were no imports of silicon metal from Russia in four of the five years since the order was issued in 2003, including the two years immediately following the issuance of the order and for the two most recent years.

Therefore, Globe concludes that, in accordance with Policy Bulletin 98:3, the Department should determine that revocation of the antidumping duty order on silicon metal from Russia is likely to lead to continuation or recurrence of dumping.⁷

Department’s Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA)⁸ the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above de minimis after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.⁹ Moreover, pursuant to section 752(c)(1)(B) of the Act, the Department will also

⁴ See Policy Bulletin 98:3, 63 FR at 18872.

⁵ Id.

⁶ See Amended Final Determination, 71 FR at 8277.

⁷ See Policy Bulletin 98:3, 63 FR at 18872.

⁸ See, e.g., SAA, at 889-90.

⁹ See, e.g., Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1; see also Pure Magnesium in Granular Form from the People’s Republic of China:

consider the volume of imports of subject merchandise for the period before and after the issuance of these antidumping duty orders.

While the data that Globe submitted on the record were sufficient for our analysis, we conducted a query of import data available from the ITC Dataweb Website (ITC Dataweb), at <http://dataweb.usitc.gov/>. Our ITC Dataweb query is consistent with the data submitted on the record by Globe: imports of silicon metal from Russia totaled 30,020 MT in 2002 (the year the petition was filed); there were no imports 2003 and 2004; imports totaled 20 MT in 2005; and there were no imports for the years 2006 and 2007.¹⁰ While the data from our ITC Dataweb query do not correspond exactly with the import statistics provided by Globe (Globe stated that 22 MT of silicon metal from Russia were imported for consumption during 2005 while our ITC Dataweb query indicates that 20 MT were imported), both sets of data indicate that imports of subject merchandise declined significantly during the period of this sunset review, and in most years, ceased entirely.

Our review of the data demonstrates that after the issuance of the antidumping duty order in 2003, the annual import volume of silicon metal from Russia was either non-existent or existed in quantities significantly smaller than those prior to the issuance of the antidumping duty order. The data indicates that but for 2005 imports of 20 MT (less than 0.01 percent of pre-order exports of 30,020 MT), there were no imports of the subject merchandise over the five-year period concerning this sunset review. We can reasonably conclude that no exports in 2003 and 2004, negligible exports in 2005, and no exports in 2006 and 2007 is, in this case, essentially the same as the cessation of imports.

We have also examined whether dumping continued at any level above de minimis after issuance of the order. The Department determined rates above de minimis for all Russian producers and exporters during the investigation.¹¹ As the Department has not conducted any administrative reviews since the issuance of the antidumping duty order, the margins from the investigation are the prevailing margins. Because there have been virtually no imports of subject merchandise after the issuance of the antidumping duty order, and foreign producers and exporters have not demonstrated an ability to sell at non-dumped prices with the discipline of the order in place, we determine that revocation of the antidumping duty order on silicon metal from Russia would be likely to lead to continuation or recurrence of dumping. Therefore, pursuant to section 752(c)(1)(A) of the Act, we determine that revocation of the antidumping duty order on silicon metal from Russia would be likely to lead to continuation or recurrence of dumping.

Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 5417 (February 6, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁰ The Department ran a query of imports of silicon metal from Russia for the years 2002 through 2007 using data from the ITC for the Harmonized Tariff Schedule categories 2804.69.50 and 2804.69.10. The Department's analysis of import trends is shown at Attachment I.

¹¹ See Antidumping Duty Order, 68 FR at 14579; see also Amended Final Determination, 71 FR 8277.

2. Magnitude of the Dumping Margin Likely to Prevail

Interested Party Comments

Globe states that section 752(c)(3) of the Act requires the Department to provide to the ITC the company-specific margin of dumping that is likely to prevail if the order were revoked. Additionally, Globe states that according to the SAA at 890 and the House Report accompanying the URAA, the Department normally will select a margin “from the investigation, because that is the only calculated rate that reflects the behavior of exporters . . . without the discipline of an order or suspension agreement in place.” Further, citing Policy Bulletin 98:3, 63 FR at 18873, Globe contends that “for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department will provide a margin based on the all others rate from the investigation.”¹² Globe argues that, according to Policy Bulletin 98:3, the Department may only depart from these general rules and use a more recently calculated margin for a particular company where: (1) dumping margins declined or were eliminated, and import volumes remained steady or increased during the life of the order; and (2) dumping margins increased during the life of the order.

Globe states that in the instant case, the Department determined dumping margins for Bratsk, Kremny, and for all other Russian producers in the investigation, and notes that there have been no administrative reviews of the antidumping duty order on silicon metal from Russia. Therefore, according to Globe, the margins determined in the investigation have remained unchanged and imports of silicon metal from Russia have essentially ceased after the imposition of the antidumping duty order.

Thus, Globe argues, in accordance with Policy Bulletin 98:3, the Department should determine that the margin of dumping likely to prevail if the order is revoked is 87.08 percent for Bratsk, 61.61 percent for Kremny, and 79.42 for all other producers and exporters of silicon metal from Russia. Globe notes that the Department calculated these margins in the investigation.

Department’s Position

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. Normally, the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.¹³ The Department has conducted no administrative reviews to consider a more recently calculated margin for silicon metal from Russia.

Therefore, consistent with section 752(c) of the Act, the Department will report to the ITC the corresponding individual company rates and the Russia-wide rate from the investigation as noted in the “Final Results of Sunset Review” section, infra, because these rates are more probative of the behavior of exporters without discipline of an order in place.

¹² See Policy Bulletin 98:3, 63 FR at 18873.

¹³ See, e.g., SAA at 890.

Final Results of Sunset Review

For the reasons stated above, we determine that revocation of the antidumping duty order on silicon metal from Russia would be likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (Percent)
ZAO Kremny and SUAL-Kremny-Ural, Ltd.	61.61
Bratsk Aluminum Smelter and Rual Trade Limited	87.08
All Others*	79.42

*Prior to Russia's graduation to market-economy status in 2002, this rate was referred to as the Russia-wide rate.

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the Federal Register.

David M. Spooner
Assistant Secretary
for Import Administration

(Date)

ATTACHMENT I

HTS – 2804.69.50: Silicon, Containing by Weight Less Than 99 percent of Silicon
First Unit of Quantity by Quantity Description and First Unit of Quantity
For Russia: U.S. Imports For Consumption¹⁴

Annual Data

Quantity Description	Country	2002	2003	2004	2005	2006	2007	Percent Change 2006 - 2007
		In Actual Units of Quantity						
Kilograms	Russia	16,794,474	0	0	20,000	0	0	N/A

HTS – 2804.69.10: Silicon, Containing by Weight Less Than 99.99 Percent but not Less Than 99 Percent of Silicon
First Unit of Quantity by Quantity Description and First Unit of Quantity
For Russia: U.S. Imports For Consumption

Annual Data

Quantity Description	Country	2002	2003	2004	2005	2006	2007	Percent Change 2006 - 2007
		In Actual Units of Quantity						
Kilograms	Russia	13,225,629	0	0	0	0	0	N/A

Aggregate Volume for HTS Headings 2804.69.50 & 2804.69.10: Metric Tons¹⁵

Quantity Description	Country	2002	2003	2004	2005	2006	2007	Percent Change 2006 - 2007
		Units = Metric Tons (MT)						
Metric Tons (MT)	Russia	30,020	0	0	20	0	0	N/A

¹⁴ Sources: Data has been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.

¹⁵ Multiplication factor used to convert kilograms to MT = 0.001. Source: U.S. Bureau of the Census, Section 9 Conversion Tables.